

NATIONWIDE PERMITS

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OVERVIEW NATIONWIDE PERMITS (NWPS)

Issued on a National Level by the Chief of Engineers.

Authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment.

Authorize a variety of activities (currently 50 different NWPs) such as bank stabilization, utility lines, road crossings, and residential developments.

- ▶ Divisions are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state.



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OVERVIEW NATIONWIDE PERMITS (NWPS)

NWPs are proposed, issued, modified, reissued (extended) and/or revoked every 5 years.

Existing 2012 NWPs, General Conditions and Regional Conditions expire on March 18, 2017.



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HOW TO DETERMINE IF AN ACTIVITY QUALIFIES FOR USE OF A NWP

1. NWPs are activity specific. Refer to the list of NWPs to determine if your proposed activity may be authorized by a NWP. The most commonly used NWPs are:
 - ▶ #3- Maintenance
 - ▶ #7- Outfall Structures and Associated Intake Structures
 - ▶ #12- Utility Line Activities
 - ▶ #13- Bank Stabilization
 - ▶ #14- Linear Transportation Projects
 - ▶ #27- Aquatic Habitat Restoration, Establishment, and Enhancement Activities
 - ▶ #29- Residential Developments
 - ▶ #39- Commercial and Institutional Developments
 - ▶ #48- Commercial Shellfish Aquaculture



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HOW TO DETERMINE IF AN ACTIVITY QUALIFIES FOR A NWP

2. In order for an activity to qualify for use of a NWP, the activity must comply with the **specific NWP**, **ALL** of the **General Conditions** and **ALL** of the Charleston District **Regional Conditions**.

The General and Regional Conditions are available on our website.

NWP Checklists that can assist you with determining if a project qualifies for a NWP are available on our website.

3. If there is not a NWP that authorizes a proposed activity OR the proposed activity does not comply with the General and Regional Conditions, an alternative permit type will be necessary.

Regional General Permit

Individual Permit

Refer to our website for information regarding Nationwide, Regional, and Individual Permits

<http://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>



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HOW TO APPLY FOR A NWP

Some activities authorized by NWPs may require submittal of a **Pre-Construction Notification (PCN)** prior to commencing work and some activities may not require submittal of a PCN prior to commencing work.

- ▶ Refer to the specific NWP, the General Conditions, and the Regional Conditions to determine if a PCN is required.
- ▶ If you are unable to make this determination or would like verification that an activity qualifies for a specific NWP, you will need to submit a PCN.

General Condition # 31 *Pre-Construction Notification (PCN)* outlines the PCN process and includes information regarding:

- ▶ *Timing*
- ▶ *Contents of a Pre-Construction Notification*
- ▶ *Form of Pre-Construction Notification*
- ▶ *Agency Coordination*



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GENERAL CONDITION #31- (A) *TIMING*

The Corps must determine if the PCN is complete within **30 calendar days** from receipt.

- ▶ If the PCN is incomplete, the Corps must request the additional information within the 30-day period.

The prospective permittee shall not begin the activity until either he/she receives written verification that the activity may proceed under the NWP OR if **45 calendar days** have passed from the Corps' receipt of the complete PCN and the prospective permittee has not received written notice.

If the Corps notifies the prospective permittee in writing that an Individual Permit (IP) is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an IP has been obtained.



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GENERAL CONDITION #31- (A) *TIMING*

If a PCN is required pursuant to General Condition 18 for listed species and critical habitat and/or General Condition 20 for historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties.



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WHAT STOPS THE 45 CALENDAR DAY NWP VERIFICATION CLOCK?

Incomplete PCN

Section 7 consultation for endangered species (General Condition #18)

Section 106 consultation for historic properties (General Condition #20)



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GENERAL CONDITION #31- (B) CONTENTS OF A PRE-CONSTRUCTION NOTIFICATION

Refer to General Condition # 31 (b) for list and description of information necessary for a complete PCN.

Refer to the Charleston District Regional Conditions to determine if a PCN is required for a specific NWP that may not otherwise require a PCN.

Refer to the Charleston District Regional Conditions for additional NWP specific information that may also be required for a complete PCN.



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401 WATER QUALITY AND COASTAL ZONE CONSISTENCY DETERMINATION

South Carolina Department of Health and Environmental Control (SCDHEC) is responsible for Section 401 of the Clean Water Act and Coastal Zone Management Act.

During the reissuance process of the NWP, SCDHEC will Issue, Issue with Conditions, or Deny 401 Water Quality Certification (401) and/or Coastal Zone Consistency (CZC) Determination for **each** NWP, as applicable.

- ▶ This information is available on DHEC's website
<http://www.scdhec.gov/environment/WaterQuality/401Certification/NationwidePermits/>
- ▶ This process occurred with the existing 2012 NWPs and is pending for the proposed 2017 NWPs.



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WHAT DOES 401 AND CZC MEAN FOR NWPS THAT DO NOT REQUIRE PCNS?

If 401 and/or CZC (if applicable) are “Issued”, the permittee can begin work.

If 401 and/or CZC (if applicable) are “Issued with Conditions”, the permittee will need to contact SCDHEC prior to beginning work.

If 401 and/or CZC (if applicable) are “Denied”, the permittee will need to obtain an individual permit from SCDHEC and they should be contacted directly.



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WHAT DOES 401 AND CZC MEAN FOR NWPS THAT DO REQUIRE PCNS?

If 401 and/or CZC (if applicable) are “Issued”, then permittee can begin work once the Corps’ NWP verification letter is received.

If 401 and/or CZC (if applicable) are “Issued with Conditions”, the permittee cannot begin work until BOTH the Corps’ NWP verification letter AND the 401 Certification and/or CZC Determination are received.

If 401 and/or CZC (if applicable) are “Denied”, the permittee cannot begin work until BOTH the Corps’ NWP verification letter AND the Individual 401 Water Quality Permit from SCDHEC are received.



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WHAT ABOUT NWPS IN THE “CRITICAL AREA”?

If any activity authorized by a NWP (PCN or No PCN) will occur in the “Critical Area” (tidal waters and wetlands), a Direct Individual Critical Area Permit will be required from the Office of Ocean and Coastal Resource Management (OCRM) **prior to beginning work.**



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WHAT WILL HAPPEN WHEN THE 2012 NWPS EXPIRE ON MARCH 18, 2017?

If you begin, or are under contract to begin, the activity before March 18, 2017, you will have until March 18, 2018, to complete the activity under the terms and conditions of the 2012 NWPs, General Conditions, and Regional Conditions.

If you cannot complete the activity before March 18, 2018, the terms and conditions of the 2017 NWPs, General Conditions, and Regional Conditions will apply.

- ▶ If a PCN is required for the activity, work must cease until the NWP verification letter is received, as well as the 401 and/or CZC if necessary.



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PROPOSED 2017 NWPS

The proposal to reissue 50 existing NWPs and issue 2 new NWPs was published in the Federal Register on June 1, 2016.

- ▶ Public comment period expired August 1, 2016.
- ▶ A public notice seeking comments on the Charleston District's proposed 2017 Regional Conditions was issued on June 7, 2016, and expired on July 22, 2016.



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PROPOSED 2017 NWPS

Proposed NWP “A”: Removal of Low Head Dams

Proposed NWP “B”: Living Shorelines

New General Condition #31: *Activities Affecting Structures or Works Built by the United States.*

- ▶ 408 Consultation

Previous General Condition #31- *Pre-Construction Notification* will become #32.



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PROPOSED NEW 2017 REGIONAL CONDITIONS

RC 10. In accordance with General Condition #31, “Activities Affecting Structures or Works Built by the United States,” a PCN must be submitted if an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE” project”). See General Condition #32 paragraph (b)(10) for PCN requirements and timing for Section 408 submittals. An activity that requires section 408 permission is not authorized by a NWP until the appropriate Corps district office issues the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer issues a written NWP verification.

RC 11. For all proposed activities that would be located adjacent to an authorized Federal Navigation project, as listed in Regional Condition #13, the PCN must include project drawings that have the following information: a) location of the edges of the Federal channel; b) setback distances from the edge of the channel; c) the distance from watermost edge of the proposed structure or fill to the nearest edge of the channel and the Mean High and Mean Low waterlines; and d) coordinates of both ends of the watermost edge of the proposed structure or fill (NAD 83 State Plane Coordinates in decimal degrees). This notification requirement is in addition to the PCN requirements listed in General Condition #32.

RC 38. For **NWP’s 3, 11, 12, 13, 14, 15, 20, 22, and 33**, that require PCNs AND that involve temporary structures, fills, and/or work, including the use of temporary mats, the PCN must include a written description and/or drawings of the proposed temporary activities that will be used during project construction. This requirement is in addition to the PCN requirements listed in General Condition #32.



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PROPOSED NEW 2017 REGIONAL CONDITIONS

RC 39. For **NWP 48**, changing from bottom culture to floating or suspended culture will require submittal of a PCN to the District Engineer. Additionally, new activities involving suspended or floating culture will require submittal of a PCN to the District Engineer. Refer to the PCN requirements listed in General Condition #32. **Note:** If the District Engineer determines that the proposed floating or suspended culture will result in more than minimal adverse environmental effects, discretionary authority may be exercised and an Individual Permit may be required for the proposed activity.

RC 40. For **NWP 48**, when a new culture project will occur at a location that is adjacent to an upland property or properties that are owned by others, the project will require submittal of a PCN to the District Engineer. The PCN must include the following information in addition to the PCN requirements listed in General Condition #32:

- a. A map or depiction that shows the adjacent upland properties and adjacent property owners contact information. Note: This information may be obtained online from the applicable county's tax information pages.
- b. A signed letter(s) of "no objection" to the proposed commercial shellfish project from each of the adjacent upland property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner.



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PROPOSED NEW 2017 REGIONAL CONDITIONS

RC 41. For **NWP B**, the PCN must include the following information in addition to the PCN requirements listed in General Condition #32:

- a. A plan view project sketch that shows the proposed project footprint, the Mean High Water (MHW) line, the Mean Low Water (MLW) line, marsh line (if applicable), shoreline, width of the waterway at the project location, location of adjacent structures such as docks and boat ramps (if applicable), distance of the project footprint from the MHW line and the distance of the project footprint from adjacent structures; and proposed location of informational or navigation markers. Refer to c. and d. below, if applicable.

Note: Refer to Regional Condition #11 if the proposed project is located adjacent to an authorized Federal Navigation project for the additional information that will be required.

- b. A cross-section sketch that shows the height of the proposed project above substrate and the water depth at MHW and MLW in relation to the proposed project.



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PROPOSED NEW 2017 REGIONAL CONDITIONS

c. For low profile projects that are **18” in height or less** above substrate AND consist of **hard structures or fill material**, such as, but not limited to, riprap, oyster castles, and wooden sills, informational signs to alert boaters to the presence of the project area will be required. The PCN must include a depiction and description of proposed informational signs. The signs must be made of reflective material or must include reflective tape on the sign or sign post. The signs must be located at each end of the project area and at 100 ft increments along the project area, if applicable. **Note 1:** The permittee shall be made aware that the U.S. Coast Guard (USCG) may require the project area to be marked. Prior to commencing work, the permittee shall contact the USCG at U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL. 33131, or by phone at 305-415-6755 or 305-415-6750 regarding possible markers and/or lighting requirements. The permittee shall install all markers and/or lighting as required by the USCG. In the event that the USCG does not require markers or lighting, the permittee shall mark the project area with above Corps approved informational signs. **Note 2:** These requirements will be added to the NWP verification as special conditions.



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PROPOSED NEW 2017 REGIONAL CONDITIONS

d. For high profile projects that are **18” in height or more** above substrate AND consist of **hard structures or fill material**, such as, but not limited to, riprap, oyster castles, and wooden sills, the prospective permittee shall be made aware that the project area must be marked with diamond shaped white day markers with orange border and black print stating “Danger Obstruction”. The signs shall be located at each end of the project area and at 100 ft increments along the project area, if applicable. **Note 1:** Prior to commencing work, the permittee shall contact the USCG at U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL. 33131, or by phone at 305-415-6755 or 305-415-6750 regarding potential project specific approval of the markers. The permittee shall install all markers and/or lighting as required by the USCG. In the event the USCG does not require these or other markers and/or lighting, the “Danger Obstruction” markers are still required by the Corps. **Note 2:** These requirements will be added to the NWP verification as special conditions.



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Refer to our website for information regarding NWPs, General Conditions, Regional Conditions, NWP Checklists, and link to SCDHEC and Corps HQ websites

<http://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>



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Questions?